

UNITED STATE DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

RECEIVED

MAY 18 2007

**PATRICIA J. GIBSON,**

**Plaintiff,**

**vs.**

**WESTPOINT STEVENS, INC. and  
WESTPOINT HOME, INC.,**

**Defendants.**

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**CASE NO. 3:06-CV-0974-MEF**

**MOTION FOR PROTECTIVE ORDER BY NON-PARTY**

COMES now James R. Whatley, M.D., by and through his attorney, Robert H. Pettey, and represents and shows unto the Court as follows:

1. The record custodian for James R. Whatley, M.D., has received a subpoena duces tecum in this case, which said subpoena is attached hereto as Exhibit 1. The subpoena demands the record custodian to produce and permit inspection and copying of records pertaining to the Plaintiff.

2. The attorney for the Plaintiff has objected to the production of records pursuant to this subpoena by letters dated April 5, 2007, and April 10, 2007, which letters are attached as Exhibit 2.

3. The attorney for the Defendant has taken the position that the objection to the subpoenas are invalid. A copy of correspondence from the attorney for the Defendant regarding the objection to the subpoena dated April 16, 2007, is attached as Exhibit 3.

Robert H. Pettey, the attorney for James R. Whatley, M.D., has conferred by telephone with the attorney for the Defendant in an effort to resolve this dispute, but the attorney for the

Defendant insists on a full response to the subpoena, in spite of the objections raised by the attorney for the Plaintiff.

WHEREFORE, James R. Whatley, M.D., moves the Court to enter a protective order pursuant to Rule 26(c) FRCP directing the said James R. Whatley, M.D., to make whatever response to the subpoena the Court determines to be legally required.

SAMFORD & DENSON, LLP  
Attorneys for James R. Whatley, M.D.

By: 

Robert H. Pettey

SAMFORD & DENSON, LLP  
P.O. Box 2345  
Opelika, AL 36803-2345  
Telephone (334) 745-3504  
Facsimile (334) 745-3506  
ID Code PET013

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing upon the following, by depositing the same, postage prepaid, United States Mail, on this the 17 day of May, 2007.

Fred W. Suggs, Jr.  
Attorney for Defendant  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
P.O. Box 2757  
Greenville, SC 29602

Lateefah Muhammad  
Attorney for Plaintiff  
Lateefah Muhammad, Attorney at Law, P.C.  
P.O. Box 1096  
Tuskegee, AL 36087



Robert H. Pettey

# **Exhibit 1**

AO 88 (Rev. 1/94) Subpoena in a Civil Case

UNITED STATES DISTRICT COURT  
 MIDDLE DISTRICT OF ALABAMA  
 EASTERN DIVISION

Patricia J. Gibson,

V.

SUBPOENA DUCES TECUM  
 IN A CIVIL CASE

WestPoint Stevens, Inc. and  
 WestPoint Home, Inc.,

CASE NUMBER: 3:06-CV-0974-MEF

TO: RECORD CUSTODIAN: James K. Whatley, MD, 10 Medical Park, Valley, Alabama 36854

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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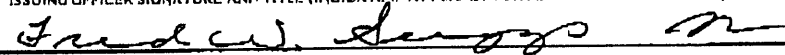
☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below: Any and all records maintained in your custody pertaining to **Patricia J. Gibson, a/k/a Patricia Jones, Patricia Barrow and Patricia Varner, SS#422-62-1936, DOB 11/8/47**, including but not limited to medical records, treatment records, counseling records, narratives, nurse's notes, doctor's notes, diagnostic reports, x-ray reports, disability records, admission records, commitment records, referrals, work excuses, questionnaires, forms, applications, and any other record of any kind in your possession. We want every piece of paper in your file relating to this patient.

PLACE <b>Ogletree Deakins Nash Smoak &amp; Stewart, P. C.                  One Federal Place, 1819 5<sup>th</sup> Avenue North, Suite 1000                  Birmingham, AL 35203-2118</b>	DATE AND TIME <b>On or before Monday, April 16,                  2007 at 10:00 a. m.</b>
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) 	DATE March 30, 2007
--	------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Fred W. Suggs, Jr. Attorney for Defendant  
 Ogletree, Deakins, Nash, Smoak & Stewart, P. C.  
 Post Office Box 2757, 300 North Main Street  
 Greenville, SC 29602  
 (864)271-1300

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

## **Exhibit 2**

# **LATEEFAH MUHAMMAD, ATTORNEY AT LAW, P.C.**

3805 WEST MARTIN LUTHER HIGHWAY  
TUSKEGEE, ALABAMA 36083  
**MAILING ADDRESS:**  
POST OFFICE BOX 1096  
TUSKEGEE INSTITUTE, ALABAMA 36087  
(334) 727-1997 TELEPHONE/FACSIMILE  
lateefahmuhammad@aol.com

**COPY**

5 April 2007

Fred W. Suggs, Jr., Esquire  
OGLETREE DEAKINS, P.C.  
300 North Main Street  
Post Office Box 2757  
Greenville, South Carolina 29602

James C. Pennington, Esquire  
OGLETREE DEAKINS, P.C.  
One Federal Place  
1819 5<sup>th</sup> Avenue North, Suite 1000  
Birmingham, Alabama 35203-2118

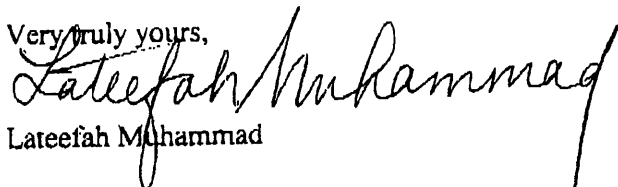
**RE: OUR CLIENT FILE #06-0120/PATRICIA J. GIBSON**  
**GIBSON v. WEST POINT STEVENS, ET AL., 3:06cv974-MEF-TFM**

**RE: OUR CLIENT FILE #06-0104/BOBBY LEE SANKS**  
**SANKS v. WEST POINT, INC., ET AL., 3:06cv1092-MHT-CSC**

Gentlemen:

This is to inform you that the Plaintiffs in the above cases **do not waive** their objections to the subpoenas submitted to their physicians. Formal objections will follow to show cause why the objections should be upheld.

Very truly yours,

  
Lateefah Muhammad

cc: Mrs. Patricia J. Gibson  
Mr. Bobby Lee Sanks  
Dr. Enrique Duprat, M.D.  
Dr. David G. Fagan, M.D.  
Dr. Ron M. Shiver, M.D.  
Dr. James K. Whatley, M.D.  
Dr. William B. Whatley, M.D.

# **LATEEFAH MUHAMMAD, ATTORNEY AT LAW, P.C.**

**3805 WEST MARTIN LUTHER HIGHWAY  
TUSKEGEE, ALABAMA 36083**

**MAILING ADDRESS:**

**POST OFFICE BOX 1096  
TUSKEGEE INSTITUTE, ALABAMA 36087  
(334) 727-1997 TELEPHONE/FACSIMILE  
latecfahmuhammad@aol.com**

10 April 2007

Fred W. Suggs, Jr., Esquire  
OGLETREE DEAKINS, P.C.  
300 North Main Street  
Post Office Box 2757  
Greenville, South Carolina 29602

James C. Pennington, Esquire  
OGLETREE DEAKINS, P.C.  
One Federal Place  
1819 5<sup>th</sup> Avenue North, Suite 1000  
Birmingham, Alabama 35203-2118

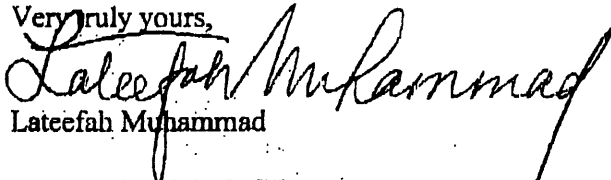
**RE: OUR CLIENT FILE #06-0120/PATRICIA J. GIBSON  
GIBSON v. WEST POINT STEVENS, ET AL., 3:06cv974-MEF-TFM**

**RE: OUR CLIENT FILE #06-0104/BOBBY LEE SANKS  
SANKS v. WEST POINT, INC., ET AL., 3:06cv1092-MHT-CSC**

Gentlemen:

This is to confirm the telephone conversation between Attorney Suggs and myself, during which I identified my Clients' reasons for objecting to the subpoenas that have been issued in the above cases. Particularly, I informed Attorney Suggs that my Clients do not agree that the scope of the subpoenas should include any and all of their medical records held by their physicians. I told him that the scope of the request is too broad and remote in time as it relates to the lawsuit and the issues in the case. I indicated to him that I was on bereavement and medical leave at the point his request to me expired and did not review his request until a couple of days after the 15-day deadline. Moreover, I indicated that a Motion for Protective Order will be filed with the Court if this dispute is not resolved regarding the broadness, remoteness and scope of the subpoenas. We both agreed to revisit the matter on Thursday, 12 April 2007, to consider what steps should be taken next. Hopefully, a new request will issue and we can get on with the business of these cases.

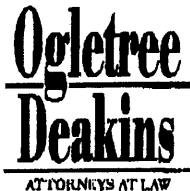
Very truly yours,

  
Lateefah Muhammad

cc: Mrs. Patricia J. Gibson  
Mr. Bobby Lee Sanks  
Dr. Enrique Duprat, M.D.  
Dr. David G. Fagan, M.D.  
Dr. Ron M. Shiver, M.D.  
Dr. James K. Whatley, M.D.  
Dr. William B. Whatley, M.D.

# **Exhibit 3**





OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

The Ogletree Building  
300 North Main Street  
Post Office Box 2757  
Greenville, South Carolina 29602  
Telephone: 864.271.1300  
Facsimile: 864.235.4754  
www.ogletreedeakins.com

April 16, 2007

**Via E-Mail and U.S. Mail**

Lateefah Muhammad, Esquire  
P.O. Box 1096  
Tuskegee Institute, AL 36087

**Re: Patricia J. Gibson v. WestPoint Stevens, Inc. and WestPoint Home, Inc.**  
**Case No.: 3:06-CV-974-MEF**

**Bobby Lee Sanks v. WestPoint Stevens, Inc. and WestPoint Home, Inc.**  
**Case No.: 3:06-CV-1092-T**

Dear Ms. Muhammad:

We have re-examined the subpoenas issued regarding your clients and find that they are proper under the circumstances. If we do not receive prompt responses from those subpoenaed, we will be forced to seek enforcement of the subpoenas.

Your objections about the scope of the subpoenas goes to the admissibility of any documents that may be produced and not to whether the subpoenas are proper.

If you will give us proper assurances that the physical and mental conditions of your clients will not be issues at trial, then the subpoenas will not be necessary.

Sincerely,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

A handwritten signature in dark ink, appearing to read "Fred W. Suggs, Jr." with a stylized flourish at the end.

Fred W. Suggs, Jr.

FWS, Jr./blg

cc: Enrique Duprat, M.D.  
David G. Fagan, M.D.  
Ron M. Shiver, M.D.  
✓ James K. Whatley, M.D.  
William B. Whatley, M.D.